IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 390 of 1981

with

SECOND APPEAL No 391 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF BABARBHAI REVANDAS

Versus

PATEL RAMBHAI SHANKERBHAI SINCE DECEASED THROUGH HEIRS:

Appearance:

1. Second Appeal No. 390 of 1981

MR MB PARIKH for MR MC SHAH for Appellant No. 1

..... for Appellants No. 1/1-1/5

MR VC DESAI for Respondents No. 1-1/3

..... for Respondent No. 2

2. Second Appeal No. 391 of 1981

MR MB PARIKH for MR MC SHAH for Appellants

MR VC DESAI for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 07/02/2002

COMMON ORAL JUDGEMENT

1. The respondents who are the original plaintiffs filed Civil Suit No.366 of 1972 in the Court of Civil Judge (J.D.), Kapadwanj against the appellants for an injunction to restrain the appellants from obstructing them in the use, occupation and enjoyment of the suit land bearing GP No.7-91-A admeasuring 25 feet in east-west direction and 23 feet in north-south direction situated in village Antroli of Kapadwanj Taluka. They also filed Regular Civil Suit No.234 of 1973 for declaration that they have a right of way in order to go to the said property and for injunction to restrain the appellants from obstructing them in using the suit way. Both the suits were resisted by the appellants.

2. It was the plaintiffs' case that they had purchased the said land by registered sale deed dated 01.04.1939 from one Kalidas Gopaldas. However, the defendants' case was that Kalidas Gopaldas had re-purchased the northern portion of the suit land on 02.04.1939 and that after the death of Kalidas Gopaldas, they were in possession of the northern portion of the suit land admeasuring 25 feet x 8 feet. They also alleged that they had become owners by adverse possession.

3. After recording the evidence led by both the parties, the learned Trial Judge found that the plaintiffs were in possession of the northern portion of the suit land admeasuring 25 feet x 8 feet on the date of the suit, that the defendants had failed to prove that Kalidas Gopaldas had re-purchased the suit land on 02.04.1939 and that they were in possession of the suit land. He also negatived the plea of adverse possession taken by the defendants. He also found that the plaintiffs had established the right of way as pleaded in the plaint. He, therefore, decreed both the suits filed by the plaintiffs.

4. The appellants filed appeals against the decrees in both the suits. However, the learned Joint District Judge, Nadiad, by his judgment and order dated 05.02.1981 confirmed the findings recorded by the Trial Court and dismissed the appeals.

5. The appellants have, therefore, filed these two

appeals. Second Appeal No.390 of 1981 is directed against the decree passed in Regular Civil Suit No.366 of 1972 while Second Appeal No.391 of 1981 is directed against the decree passed in Regular Civil Suit No.234 of 1973.

6. At the time of admission, the following substantial questions of law were framed in Second Appeal No.390 of 1981:-

(1) Whether the finding that the plaintiffs are the owners of land admeasuring 25 feet north-south and 23 feet east-west is not bad in law in view of the fact that under the document of sale Exh.57 all that was converted was the house site land of the house which had fallen down and in view of the fact that the house which had fallen down is proved to be 25 feet east-west and 15 feet north-south as the foundations of the old house which was standing on the said land were found in the area of 22 feet east-west and 15 feet north-south by the Commissioner who prepared the map Exh.82.

(2) Whether the findings on the question of title is not vitiated on account of the omission to correctly read, understand and interpret the document Exh.57

(3) Whether the finding as to the title is vitiated by error of law in as much as the evidence of Harmanbhai Becharbhai on the point of oral sale for Rs.50/- has not been considered at all.

7. In Second Appeal No.391 of 1981, the following substantial question of law was framed at the time of admission:

(1) In the plaint, the plaintiff had based his claim to right of way on title and had not elected to base the claim on easement right. Whether it was therefore open to the Court to pass a decree on the ground that the plaintiff had easement right of way.

8. Shri M.B. Parikh, learned counsel appearing for the appellants took me through the judgments of both the

courts below and submitted that the courts had committed an error in recording the findings against the appellants. However, both the courts have elaborately dealt with all the evidence on record and it is not possible to say that they have committed any error in interpreting the contents of the documentary evidence on record. In the circumstances, there is no error of law committed by the courts below and, hence, in my opinion, no substantial question of law arises. The appeals are, therefore, dismissed with no order as to costs.

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